DEPARTMENT OF STATE REVENUE

01-20100004.LOF

Letter of Findings: 10-0004
Individual Income Tax
For the Years 2001, 2005, and 2006

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Part-Time Residency Status.

Authority: IC § 6-3-1-12; IC § 6-3-2-1(a); IC § 6-8.1-5-1(b); 45 IAC 3.1-1-21(a); 45 IAC 3.1-1-22; 45 IAC 3.1-1-23(2).

Taxpayer argues that she is not responsible for paying 2005 and 2006 individual income tax because she was not a resident of Indiana during those years and any income she received was attributable to her presence in Florida.

II. Statute of Limitations.

Authority: IC § 6-8.1-5-2; IC § 6-8.1-5-2(f); IC § 6-8.1-9-1.

Taxpayer maintains that any assessment of 2001 individual income tax is barred by the three-year statute of limitations.

STATEMENT OF FACTS

Taxpayer and her husband filed joint Indiana income tax returns for 2001 through 2006. After finding herself subject to additional income tax based on those originally filed returns, Taxpayer submitted an IN-40SP in October 2009 seeking an apportionment of Taxpayer's income from that of her husband. The Department accepted the form, recognized the apportionment, and assessed Taxpayer additional income tax based on the apportionment schedules. Taxpayer objected to the assessments and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representatives explained the basis for the protest. This Letter of Findings results.

I. Part-Time Residency Status.

DISCUSSION

Taxpayer maintains that she does not owe 2005 and 2006 individual income tax because she was a Florida resident during those years and/or because the income was attributable to her Florida employment.

Indiana imposes a state income tax in the following manner. IC § 6-3-2-1(a) states that, "Each taxable year, a tax at the rate of three and four-tenths percent (3.4 [percent]) of adjusted gross income is imposed upon the adjusted gross income of every resident person, and that part of the adjusted gross income derived from sources within Indiana of every nonresident person." (Emphasis added).

Taxpayer maintains that she was not a full-time resident of Indiana during 2005 and 2006. 45 IAC 3.1-1-21(a) defines the term "resident" and states that an Indiana resident is "Any individual who was domiciled in Indiana during the taxable year, or [] Any individual who maintains a permanent place of residence in this state and spends more than 183 days of the taxable year within this state...." See also IC § 6-3-1-12 ("The term 'resident' includes [] any individual who was domiciled in this state during the taxable year, or [] any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state....")

45 IAC 3.1-1-22 defines "domicile" stating that:

> For the purposes of this Act, a person has only one domicile at a given time even though that person maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur. In order to establish a new domicile, the person must be physically present at a place, must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established. The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case. Relevant facts in determining whether a new domicile has been established include, but are not limited to:
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> (1) Purchasing or renting residential property.
> (2) Registering to vote.
> (3) Seeking elective office.
> (4) Filing a resident state income tax return or complying with the homestead laws of a state.
> (4) Receiving public assistance.
> (6) Titling and registering a motor vehicle.

(7) Preparing a new last will and testament which includes the state of domicile. (Emphasis added).

The significance of the distinction lies in the effect that domiciliary status has on the individual's state income tax liability. 45 IAC 3.1-1-23(2) states that:

> Any person who, on or before the last day of the taxable year, changes his residence or domicile from Indiana to a place without Indiana, with the intent of abiding permanently without Indiana, is subject to adjusted gross income tax on all taxable income earned while an Indiana resident. Indiana will not tax income of a taxpayer who moves from Indiana and becomes an actual domiciliary of another state or country except that income received from Indiana sources will continue to be taxable.

The Department's "2000 IT-40 PNR Forms and Instruction Booklet" states that, "If you were a part-year resident and received income while you lived in Indiana, you must file Form IT-40PNR, Part-Year Resident or Nonresident Individual Income Tax Return."

The issue is whether taxpayer was originally entitled to file an IT-40PNR return and to report her Indiana income in a manner which reflected taxpayer's purported part-time residency status.

Taxpayer indicates that she moved to Florida in and began work with her Florida employer in June 2005. Taxpayer further indicates that she returned to Indiana in July 2006. Essentially, Taxpayer states that she lived in Florida for a portion of the two years at issue and lived in Indiana for a portion of those same years. Taxpayer buttresses her claim to Florida residency status by indicating that she paid Florida utility bills. Florida has also produced a Florida ID card but admits that she retained her Indiana driver's license.

In determining Taxpayer's challenge to the assessment, it should be noted that it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(b), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

In this case, Taxpayer argues that she has met her burden of demonstrating her intention to establish a permanent domicile in Florida. Plainly Taxpayer has offered some material indication that – at least on the surface – supports that claim. Although the Department will not presume to discern Taxpayer's intentions during the time she resided in Florida from June 2005 to July 2006, there is insufficient evidence to establish that she intended the move to be permanent or that she no longer retained her Indiana domicile. To the contrary, Taxpayer retained her Indianapolis home during the years at issue. In addition, there is no indication she did not continue to take advantage of Indiana homestead laws. Given the weight of the evidence, there is insufficient information to establish Taxpayer's specific "intent of abiding permanently without Indiana...." 45 IAC 3.1-1-23(2) or that she moved to Florida with "the simultaneous intent of establishing a home at that place...." Id.

FINDING

Taxpayer's protest is respectfully denied.

II. Statute of Limitations.

DISCUSSION

Based on the belated apportionment of the income previously filed under her joint return, the Department assessed approximately $500 in additional income tax for 2001. Taxpayer now argues that the assessment is barred by the three-year statute of limitations set out in IC § 6-8.1-5-2.

The $500 assessment was made in December 2009 after Taxpayer sought and was granted an equitable apportionment of her and her husband's 2001 income. That adjustment was made pursuant to the "Indiana Innocent Spouse Allocation Worksheet" signed by Taxpayer and submitted October 2009. Having avoided the additional assessments attendant on the originally filed joint returns, Taxpayer now apparently regrets the apportionment of 2001 income which resulted in the $500 assessment.

Form IN-40SP provides that, "The Indiana Department of Revenue will figure the amount of any refund due the innocent spouse...." Presumably, if the sought for apportionment had resulted in a refund tax, Taxpayer would have had no difficulty in accepting that refund even if the refund was offered well beyond the three-year limitation period. See IC § 6-8.1-9-1.

Taxpayer sought an equitable allocation of her and her husband's income because the original joint returns reflected withholding taxes which were never paid. In effect, Taxpayer and her husband claimed credit for amounts of taxes which were never withheld by husband's employer. A subsequent review of those returns indicated that husband "underreported his [income] and falsely reported withholding on that income." In addition, "Not only did [husband] not pay any state income tax, he received a refund from [Indiana] in each of the years at issue."

The Department accepted Taxpayer's explanation claiming she was "innocent in any errors or misrepresentations regarding the Indiana taxes filed by me and my husband.... for the years 2000-2006." In her request for an apportionment of income – and relief from the pending assessments – taxpayer indicated that her "income is equal to or greater than my husband's in most of the years in question" and that "[a]ll of my income and taxes were reported on the Federal returns and any income and taxes applicable to the State of Indiana were reported on the State returns for all of the years in question." At least in regards to the year 2001, Taxpayer erred because the apportionment of income resulted in the $500 assessment now at issue.

Essentially, the request to apportion her and her husband's income was based on the assertion that the original joint returns contained errors of which she was unaware; nonetheless, those original joint returns did contain substantial misstatements. Taxpayer acknowledged those misstatements and sought relief. However having sought that relief, any assessment stemming from those returns and those original years is not barred by the three-year statute of limitations. Under IC § 6-8.1-5-2(f), "If a person files a fraudulent, unsigned, or substantially blank return, or if a person does not file a return, there is no limit within which the department must issue its proposed assessment."

The Department is well prepared to accept Taxpayer's defense that she was unaware of any incorrect representations contained within the originally filed joint returns and that she had the right to seek relief as an "innocent spouse." However, Taxpayer cannot then claim that any assessment resulting from the apportionment of her income is barred by the statute of limitations because – based on her own admission – the original returns were fraudulent.

FINDING

Taxpayer's protest is respectfully denied.

SUMMARY

Taxpayer's protest is denied in its entirety.

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